

**Letter of Findings: 01-20150632P**  
**Indiana Individual Income Tax**  
**For The Tax Years 2007, 2008, and 2009**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

When Individuals made partial tax payments, their partial payments were, by statute, first applied to penalties and then to interest owed and then to the base tax. Their unpaid tax continued to accrue interest, which may not be waived. Additional penalties, interest, and collection costs were not artificially created but were mandated by Indiana law.

**ISSUE**

**I. Indiana Individual Income Tax - Partial Payments and Application.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-6-1; IC § 6-8.1-8-1.5; IC § 6-8.1-8-2; IC § 6-8.1-8-3; IC § 6-8.1-8-4; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayers requested that the Department abate additional penalty, interest, and collection costs for the 2007, 2008, and 2009 tax years.

**STATEMENT OF FACTS**

Taxpayers ("Husband" and "Wife") are Indiana residents who file "married-filing-jointly" Indiana individual income tax returns (IT-40 returns) since the 1990s.

Beginning after the second quarter of 2007, Taxpayers stopped filing their estimated tax returns and making their quarterly estimated payments. Taxpayers also ceased filing their Indiana returns for 2007, 2008, and 2009 ("Tax Years at Issue") on or before the statutory due dates. Several years later, Taxpayers filed their 2007, 2008, and 2009 returns which were postmarked October 1, 2013. Taxpayers' returns showed that they reported base tax, an underpayment penalty, and interest for each of the Tax Years at Issue. Taxpayers, however, did not make any payments at the time when they filed the returns. Rather, the earliest payments remitted by Taxpayers were partial payments which were postmarked October 23, 2013.

The Indiana Department of Revenue ("Department") processed Taxpayers' IT-40 returns, applied the partial payments, and issued proposed assessments for the unpaid balance for each of the Tax Years at Issue. From October 1, 2013 until the time that Taxpayers' outstanding balance for each Tax Year was paid in full (in 2015), one of the assessments had advanced to a warrant collection stage, and additional collection costs were included in Taxpayers' balance due as a result.

Taxpayers protest, claiming that they were not responsible for the penalty and interest in addition to the collection costs. An administrative phone hearing was held during which Taxpayers' representative explained the basis of their protest. This Letter of Findings ensues and addresses Taxpayers' protest. Additional facts will be provided as necessary.

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**DISCUSSION**

For the Tax Years at Issue, Taxpayers offered a summary of their calculation, outlining that Taxpayers paid \$13,325.52 for tax year 2007, \$9,819.02 for tax year 2008, and \$13,567.10 for tax year 2009. Taxpayers contended that they were not responsible for additional penalties, interest, and collection costs in the amount of \$2,671.29. Taxpayers' letter of protest stated, in relevant part, the following:

Due to problems that arose from the way [the Department] posted the payments that accompanied [Taxpayers'] income tax returns for these years, a certain amount of penalties were artificially created. However, an analysis of each year's tax returns and their respective payments reveals that too much was accrued in penalties and interest . . . .

In each year, we calculate the amount of penalties and interest that would have accumulated had the payments for each year's tax return been posted properly to each respective tax year. Interest for each year was calculated from the return due date through the date it was actually received by the Department. The analysis shows that the Department accrued \$2,671.29 of penalties and interest (in total for all three years) in excess of what should have been accrued . . . .

Taxpayers asserted that the Department should abate and refund \$2,671.29 to Taxpayers.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. To efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Indiana also follows the Internal Revenue Code concerning individual's statutory obligations to file estimated tax returns and make timely estimated payments. IC § 6-3-4-4.1(a) (Version (a), effective until January 1, 2017) further states that "[a]ny individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code." IC § 6-3-4-4.1(b) imposes a penalty when individuals fail to comply.

When taxpayers file their Indiana tax returns but fail to pay the full amount of tax shown on their returns "by the due date[s] for the return[s] or the payment[s], or incur[] a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." IC § 6-8.1-10-1; IC § 6-8.1-6-1(e). Further, taxpayers will be responsible for a ten percent penalty when they fail to timely (1) file returns, (2) pay the full amount of tax shown on their returns on or before the due date for the return or payment, or (3) incur, "upon examination by the [D]epartment, a deficiency that is due to negligence." IC § 6-8.1-10-2.1(a). Whenever taxpayers make a partial payment on their tax liability, the Department is required to apply the partial payment first to any penalty owed by the taxpayers, then to any interest owed by the taxpayers, and finally to the tax liability of the taxpayers. IC § 6-8.1-8-1.5.

Accordingly, taxpayers are responsible for an underpayment penalty, a ten percent late penalty, interest, in addition to the base tax, when they failed to timely make an estimated return with the estimated payment and

timely file income tax return or pay the full amount of liability due. Additionally, when the taxpayers make only partial payments, the Department must apply any penalties first and then interest before it can apply the remaining payments to the tax. As a result, the unpaid tax continues accruing the interest and the interest may not be waived under IC § 6-8.1-10-1(e).

In this instance, Taxpayers ceased filing estimated returns and making their estimated payments in 2007. In addition, Taxpayers filed their IT-40 returns for the Tax Years at Issue on October 1, 2013—more than three years late. Taxpayers also reported less than the full amount they actually owed. Specifically, Taxpayers reported that the amount due included only taxes, interest, and some underpayment penalties; they excluded the ten percent penalty (also known as late or negligence penalty). Taxpayers stated that the statutory interest was calculated from the due date of each return through the date it was actually received by the Department. Taxpayers, however, failed to substantiate their calculation of the interest. The Department processed the returns and made several adjustments, including a reduction of the estimated tax credit for 2007. The Department imposed the ten percent late or negligence penalty because Taxpayers have a history of noncompliance. The Department then issued various assessments for tax deficiencies. Moreover, when Taxpayers filed their IT-40 returns on October 1, 2013, they did not include the check payments within their IT-40 returns. Rather, Taxpayers' partial payments were received by the Department separately between October 23, 2013 and November 5, 2013. The records showed that Taxpayers' earliest partial payments were received and postmarked October 23, 2013 for 2009, October 30, 2013 for 2008, and November 5, 2013 for 2007. Taxpayers noted "2009 IT-40," "2008 IT-40," and "2007 IT-40" in the "Memo" section of each check for 2009, 2008, and 2007. A review of the Department's records further showed that the Department applied each of the partial payments as Taxpayers' instructed on the notation of the checks.

As mentioned earlier, the Department's records showed that Taxpayers' earliest partial payments which were less than the full amount they owed (especially that the payments excluded the ten percent penalty). The Department thus must apply payments (partial or otherwise) pursuant to IC § 6-8.1-8-1.5, a statutory mandate. In other words, when Taxpayers' October 23, 2013 for 2009, October 30, 2013 for 2008 and November 5, 2013 for 2007 payments were less than the full amount, including all penalties, interest and taxes, the Department had to apply those payments first to penalties, then to interest, and then to base tax. When Taxpayers' partial payments were applied to the penalties, interest, and a portion of tax, the unpaid tax continued to accrue interest under IC § 6-8.1-10-1. The Department is precluded by statute from waiving the interest IC § 6-8.1-10-1(e).

The Department properly issued assessments and notified Taxpayers of the deficiencies. However, Taxpayers did not timely address the assessments and the assessments eventually advanced to a warrant collection stage. The Department is permitted to engage a third party collection agency pursuant to IC § 6-8.1-8-2, IC § 6-8.1-8-3, and IC § 6-8.1-8-4. When a tax liability advances to the warrant collection stage and the collection agency collects the tax liability, the collection agency retains a portion of the money for its collection efforts. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to abate the collection fees.

In short, given the totality of the circumstances, Taxpayers' partial payments were not made timely and were applied as statutorily mandated. The additional penalties (a negligence penalty or a late penalty), interest, and collection costs were not artificially created by the Department because it does not have the statutory authority to do so.

## FINDING

Taxpayers' protest is respectfully denied.

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